

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7

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In the Matter of

KR & R INVESTMENT CORP.
Chesterfield, Missouri

Respondent

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Docket No. TSCA-07-2003-0268

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and KR & R Investment Corp. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F, *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7.

4. The Respondent is KR & R Investment Corp., 16640 Andraes Drive, Chesterfield, Missouri, 63005.

Statutory and Regulatory Background

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851-56, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding to it Sections 401 through 412, 15 U.S.C. §§ 2681-92. Section 1018 of the Act required that EPA and the Department of Housing and Urban Development (HUD) jointly issue regulations requiring the disclosure of information relating to lead-based paint and/or lead-based paint hazards to persons selling or leasing housing constructed before the phase out of residential lead-based paint use in 1978. EPA and HUD issued those regulations on March 6, 1996, which are codified at 40 C.F.R. Part 745, Subpart F. The regulations require that, prior to purchasers and lessees becoming obligated under contract, sellers and lessors of most residential housing built before 1978 disclose the presence of known lead-based paint and/or lead-based paint hazards; provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; provide purchasers and lessees with a federally approved lead hazard information pamphlet and a lead warning statement; and provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards. The failure or refusal to comply with the regulations is a violation of the regulations and of Section 409 of TSCA, for which a monetary penalty may be assessed.

Alleged Violations

6. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

Allegations Pertaining to All Counts

7. Respondent is a Missouri corporation.

8. Respondent is an "agent" as that term is defined by 40 C.F.R. § 745.103, in that Respondent entered into a contract with U.P.A. Corporation to represent it for the purpose of leasing the residential property U.P.A. Corporation owns, known as University Place Apartments, located at 1205 University Avenue, Columbia, Missouri, 65201.

9. The property referenced above was constructed prior to 1978.

10. The property referenced above is "target housing" as that term is defined by 40 C.F.R. § 745.103 because the property is housing constructed before 1978.

Count I - Failure to Provide Pamphlet

11. Records collected from Respondent show that Respondent entered into a contract to lease Apartment 125 of the property on or about March 13, 2002.

12. Records collected from Respondent show that Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet before the lessee was obligated under a contract to lease target housing.

13. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count II - Failure to Provide Pamphlet

14. Records collected from Respondent show that Respondent entered into a contract to lease Apartment 308 of the property on or about June 27, 2001.

15. Records collected from Respondent show that Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet before the lessee was obligated under a contract to lease target housing.

16. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count III - Failure to Provide Pamphlet

17. Records collected from Respondent show that Respondent entered into a contract to lease Apartment 212 of the property on or about April 30, 2001.

18. Records collected from Respondent show that Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet before the lessee was obligated under a contract to lease target housing.

19. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count IV - Failure to Provide Pamphlet

20. Records collected from Respondent show that Respondent entered into a contract to lease Apartment 241 of the property on or about April 25, 2001.

21. Records collected from Respondent show that Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet before the lessee was obligated under a contract to lease target housing.

22. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count V - Failure to Provide Pamphlet

23. Records collected from Respondent show that Respondent entered into a contract to lease Apartment 302 of the property on or about April 20, 2001.

24. Records collected from Respondent show that Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet before the lessee was obligated under a contract to lease target housing.

25. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

2. Respondent neither admits nor denies the factual allegations set forth above.

3. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above.

4. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

5. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

6. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of One Thousand Five Hundred and Forty Dollars (\$1540) to be paid within thirty (30) days of the effective date of the Final Order.

7. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 6 above, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a mitigated civil penalty of One Thousand Five Hundred and Forty Dollars (\$1540) within thirty (30) days of the effective date of this Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or

cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check shall simultaneously be sent to the following:

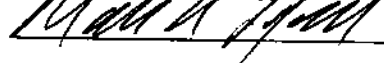
Regional Hearing Clerk
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101; and

Mike Gieryic
Office of Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT
KR & R INVESTMENT CORP.

Date: 7-30-03

By: 

MARK R. LEIFIELD
Printed Name

Title: PRESIDENT

**COMPLAINANT
ENVIRONMENTAL PROTECTION AGENCY**

Date: 8/4/03

By: William A. Spratlin
William A. Spratlin, Director
Air, RCRA, and Toxics Division

Date: August 5, 2003

By: Mike Gieryic
Mike Gieryic
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: August 6, 2003

Robert L. Patrick
ROBERT L. PATRICK
Regional Judicial Officer
EPA, Region 7

IN THE MATTER OF KR & R Investment Corp., Respondent
Docket No. TSCA-07-2003-0268

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Michael Gieryic
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

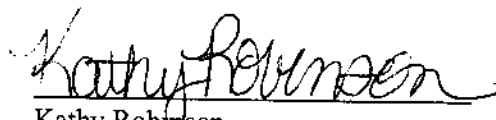
Copy by Certified Mail Return Receipt to:

KR & R Investment Corp.
16640 Andreas Drive
Chesterfield, Missouri 63005

and

Douglas Miller
University Place Apartments
1205 University Avenue, Suite 1000
Columbia, Missouri 65201

Dated: 8/7/03


Kathy Robinson
Regional Hearing Clerk